HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not a approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No.1574 of 2001
(Old No. 3192 of 1984).

Satish Chandra & another	…….	Appellants
	Versus	
State	……..	Respondent.

Approved for reporting.

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Not approved for reporting.

Date of Decision 6th December, 2004.

Initial of Judge.

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Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.1574 of 2001
(Old No. 3192 of 1984).

(1) Satish Chandra S/o Sri Moti Ram,
R/o Kujoli, P.S. Pithoragarh,
District Pithoragarh.
(2) Shobi Chand S/o Sri Gopal Chand,
R/o Village-Nolara, Patti-Riguniya,
Tehsil-Munsiyari, District-Pithoragarh.

..... Appellants

Versus

State ..... Respondent.

Sri Lokendra Dobhal, learned counsel for the appellants,
Sri A. Rab, learned A.G.A. for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

1. This criminal appeal arises out against the judgment and order dated 13.11.1984 passed by Sessions Judge, Pithoragarh in Sessions Trial No. 08 of 1983, State versus Satish Chandra and another convicting and sentencing the accused/appellants to imprisonment for life under Section 302 read with Sec. 34 of the Indian Penal Code.

2. Brief facts of the prosecution case are that on the relevant date i.e. 31.12.1981 accused Satish Chandra was Patwari of Patti Riguria, Tehsil Munsyari. One Narain Datt was attached as peon to him. Narain Dutt proceeded one & half month's leave in connection with the marriage of his daughter. In that leave vacancy the deceased Harish Chandra who happened to be the younger brother of

Narain Datt was working as peon of accused Satish Chandra. The other accused Sobi Chandra is resident of village-Nolara. The accused used to live in village Nolara in a rented house. Harish Chandra deceased while working as peon of Satish Chandra, was living in another room, which is the place of occurrence.

3. On the date of occurrence i.e. 31.12.1981 the leave of Narain Datt was to expire. So, the deceased Harish Chandra wanted to return the handcuffs to Nachani, from where he had brought it on loan. The accused Satish Chandra asked Harish Chandra (deceased) not to return the handcuffs but Harish Chandra did not agree and said that as his service was to come to an end that day it was better if he handed over the handcuffs. On this accused Satish Chandra got infuriated and he with the help of accused Sobi Chandra beat Harish Chandra in the very room where Harish Chandra was living. This incident was seen by eye witness Lal Bahadur (P.W.3) who was sitting at the tea shop just above the room where the occurrence took place from a distance but he did not pay any attention to it and went away to his house.

4. It was said that as a result of beating Harish Chandra became unconscious and then two accused tied a rope around his neck and hanged him in the ceiling of the room as a result of which deceased Harish Chandra died due to hanging. The next day, the accused Satish Chandra informed the Kanungo of Nolara that the deceased Harish Chandra committed suicide in his room by hanging in the ceiling. On this information a case of suicide was registered.

5. After the case was registered S.I.-G.R.Bhatt (P.W.6) went to the place of occurrence on 03.1.1982, prepared inquest memo on the deadbody of the deceased and sent the same for post mortem examination.

6. Dr. Ashok Sharma (P.W.2) conducted the post mortem on the deadbody of the deceased. He found the following ante mortem injuries on the body of the deceased Harish Chandra:-

> Ligature mark 1 cm. broad in between chin and larynx parallel to lime of mandible running backward and upward upto mastoid process behind the ear in neck. On cutting underlying tissue was white, glisting and dry colour of mark brown.

In the opinion of the doctor, the death was as a result of asphyxia due to hanging. After this the case was converted into one under Sec. 302 I.P.C. and was registered against the two accused.

7. The Investigating Officer prepared the site plan of the place of occurrence and after completing the investigation submitted chargesheet (Ext.Ka-16) against the accused on 20.9.1982.

8. After submission of the chargesheet, the accused Satish Chandra and Sobi Chandra were committed to the Court of Sessions and the learned Sessions Judge on 24.6.1983 framed the charge against them under Sec. 302 read with Sec. 34 and Sec. 201 read with Sec. 34 of the I.P.C. Subsequently, the said charge was amended and the accused persons were charged under Sec.302 read with Sec. 34 of the I.P.C. on 30.10.1984.

9. The prosecution in support of its case examined P.W.1 Hari Shankar. He is another brother of the deceased Harish Chandra. He was examined to prove that Harish Chandra was working as peon of the accused Satish Chandra on leave vacancy of his brother Narain Datt and that Harish Chandra used to complain to his wife and others that the accused Satish Chandra was harassing him as he used to demand money for wine on the pretext that he would get the services of the deceased confirmed. P.W.2 Dr. Ashok Sharma who conducted the post mortem examination. P.W.3 Lal Bahadur and P.W.4 Gopal Singh are the witnesses of fact who had seen the beating etc. by the two accused. P.W.5 S.I. Kamal Singh, who investigated the case, visited the place of occurrence and prepared the site plan etc. P.W.6 S.I.-G.R.Bhatt, who prepared the inquest memo and other papers of the deceased and P.W.7 S.I. Amba Datt Pandey, another Investigating Officer, who submitted chargesheet Ext.Ka-16 in the case.

10. Statements of the accused were recorded under Section 313 of the Criminal Procedure Code. Accused Satish Chandra pleaded not guilty and alleged false implication. In his statement he stated that his cousin brother Pitamber who was working in the P.W.D. as Survey Amin was murdered in January 1980 in Jhulaghat. The investigation of that case was being done by some Inspector of Pithoragarh Police Station. There were some irregularities in the investigation and on his application of the investigation was changed and was handed over to the C.I.D. The C.I.D. submitted chargesheet for this murder against Constable Pathak, S.I.Laxman Singh and another Constable. In the meantime Constable Pathak came on transfer to Munsyari

Police Station. The accused Satish Chandra was deputed to Munsyari Police Station on training in June 1981. Constable Pathak, who was in Munsyari Police Station, was feeling inimical to this accused because a chargesheet had been submitted against him as a result of the investigation by the C.I.D. on the application of this accused. At the instigation of Constable Pathak, S.I. Kamal Singh used to harass this accused. However, after the training the accused joined his duties in Rigunia where Narain Datt was his peon and when he went on leave Harish Chandra was working in leave vacancy who committed suicide and finding this a good opportunity the employees of the Police Station Munsyari implicated the accused and concocted a false case.

11. Accused Sobi Chand did not give any reason why he has been implicated and he only denied the charge and alleged his false implication. No evidence in defence was adduced by the accused persons.

12. On the application of the accused the learned Sessions Judge inspected the place of occurrence on 17.10.1984 in the presence of the accused, their learned counsel and the State counsel and recorded the inspection note which is on record as paper No.81/A1.

13. The learned Sessions Judge after hearing the learned counsel for the parties and on the basis of his appreciation of the material on record and the incriminating circumstances accepted the prosecution version and found the appellants guilty of committing murder of Harish Chandra and accordingly convicted and sentenced them as mentioned above.

14. Heard the learned counsel for the appellants and learned A.G.A. appearing on behalf of the State. The record of the case has also been examined by us.

15. According to the prosecution case, the death of deceased Harish Chandra came to the knowledge of Narain Dutt, Kanungo through patwrai of Patti Riguria, Tahsil Munshyari. It is evident form perusal of the GD report no. 6/7:45 a.m. dated 03.01.1982 that Kanungo received information through Patti Riguria, Tahsil Munshyari, the peon Harish Chandra has died on account of hanging and on this information, Kanungo scribed the report on 02.01.1982 and lodged the same at police station Munshyari at Choki Thal, Munshyari at 3:15 p.m. The another GD report No. 9/17:30 hours dated 03.01.1982 shows that after receiving the information the police went at the spot and saw the dead body and found that the deceased was hanging. The door of the room was opened and the inquest on the body thereafter was prepared in the presence of the panchas Hari Shanker, Gopal Chandra and Nain Singh and others. After the inquest on the body of the deceased Harish Chandra, the post mortem on the body of the deceased was conducted by the Dr. Ashok Sharma on 04.11.1982 at 10:00 a.m.

16. Now it is important to note here that upto the stage of inquest on the dead body was performed, the name of the accused/appellant was not known either to the informant Hari Shankar P.W.1 or the eyewitness Gopal Singh P.W. 4. Both these persons are witnesses of the inquest but nothing has been elicited in the panchanama that the death was on account of murder committed by the accused/appellants.

17. It would be further relevant to mention the deposition of P.W.1 Hari Shankar in this regard who has stated that his brother Harish Chandra deceased was in the leave vacancy of Narain Datt who was also peon with patwari and when he proceeded leave for 1-1/2 months, the deceased Harish Chandra was appointed as peon to patwari in the leave vacancy. This witness has stated that patwari Satish Chandra one of the accused/appellant used to harass him in various ways and deceased Harish Chandra also used to make complain to his brother Hari Shankar with regard to the harassment committed upon him by Satish Chandra accused/appellant. This witness has stated that he received the information with regard to death of his brother Harish Chandra on 02.01.1982 and he went to the spot. He has also stated that the police came over there and he was also appointed one of the witnesses in the inquest report. This witness has proved the inquest which has been exhibited as Ex. Ka. 1. In the cross examination, this witness has stated that he came to know about the death of his brother Harish Chandra only on the basis of slip received by him from Satish Chandra patwari. Therefore, it is quite clear that informant Hari Shankar P.W. 1 had infact no information with regard to the actual occurrence. He has been produced by the prosecution only to show the circumstances that his brother was being harassed by the patwari but the allegation made by P.W. 1 Hari Shankar about the harassment committed upon the deceased by the patwari does not conclusively prove the guilt of the accused/appellant. It is, therefore, quite clear that when the F.I.R. was lodged as well as when the inquest on the body of the deceased was prepared by the police on

03.01.1982, the name of the accused/appellants were not known. It is also important to mention here that one of the witnesses Gopal Singh P.W. 4 is also an eyewitness as well as witness of the inquest but this witness has also not deposed anything about the actual incident before the police officer who performed the inquest on the dead body.

18. The prosecution in order to support its case about alleged murder of Harish Chandra by the accused/appellants, has produced P.W. 3 Lal Bahadur and P.W. 4 Gopal singh as eyewitnesses. Now the testimony of these two witnesses would have to scrutinize in order to reach on definite conclusion about the participation of the accused/appellants in the commission of crime. Only, therefore, it can be held whether the accused/appellants are liable for committing the murder of Harish Chandra deceased or not.

19. It is noteworthy to mention here that as per the eyewitnesses again i.e. P.W. 3 and P.W. 4, the deceased was severely beaten by the accused/appellants Satish Chandra as well as another person. P.W. 3 has stated that the accused/appellants had beaten the deceased with kicks and fists. This eyewitness has also stated that he went to the room of the deceased Harish Chandra and saw that the accused/appellants were beating him. This witness has also stated that Harish Chandra deceased was crying “O Maa: Mujhe Mar Diya”.

20. Likewise, P.W. 4 Gopal Singh another eyewitness has stated that he went to the room of deceased Harish Chandra in the evening of 31.12.1981 at about 8:00 p.m. and then he saw that the accused Satish Chandra as well

as another persons were trying to hang the deceased and when he asked as to what they were doing then the accused/appellants patwari Satish Chandra ran towards him with danda but he made his escape good.

21. Therefore, it is quite clear that the prosecution has tried to establish that deceased Harish Chandra was beaten severely by the accused/appellants before he was hanged by the accused/appellants in order to give shape that the deceased Harish Chandra committed suicide.

22. It is important to note here that both the eyewitnesses produced by the prosecution are chance witnesses. P.W. 3 Lal Bahadur has stated that at the time of the occurrence, he was working with Dr. Manohar Singh Jangpangti and deceased Harish Chandra used to reside in the ground floor of the house of Dr. M.S. Jangpangti. He stated that the deceased Harish Chandra used to cook food for accused/appellants Satish Chandra patwari in his room. This witness has stated that at about 6:00 p.m. on 31.12.1981, he went to hotel of Narain Chandra after having his work finished and was waiting for Narain Chandra. He heard the hue and cry from the room of Harish Chandra deceased and when he went to the spot, he saw that Satish Chandra alonwith one another persons were beating deceased Harish Chandra. This witness has further stated that he got an impression that it was a routine affair between the accused/appellants and the deceased and hence he left the place of occurrence. He has further stated that after ½ an hour he went to the house of Gopal Singh Jangpangti and there he remained for about 45 minutes. On his return, he started urinating near the room of

deceased Harish Chandra and then heard the voice of two-three persons from inside the room of Harish Chandra deceased. This witness has further deposed that on next day when he came in the evening after finishing his work then he saw that the villagers standing outside room of Harish Chandra and asking each other as to why Harish Chandra has not opened the door. This witness has stated that the villagers tried to open the door but the same was closed from inside and after opening the door, the villagers saw that the deceased was hanging with the rope.

22. The evidence of this witness does not inspire confidence, firstly his ocular version with regard to *Marpeet* committed upon deceased Harish Chandra by the accused/appellants is not corroborated with the medical version. P.W. 2 Dr. Ashok Sharma who has conducted the post mortem on the body of the deceased Harish Chandra has clearly deposed that he did not see any external mark of injury on the person of the deceased. He has categorically deposed except the ligature marks on the body of the deceased, no other mark of injury could be seen by him.

23. The ocular version of P.W. 3 Lal Bahadur again does not inspire confidence as he kept mum for a long time and did not report this matter to any of the villagers or the authorities. This witness has stated that he saw the incident with regard to *Marpeet* but on the next day when he saw all the villagers assembled outside the room of Harish Chandra, he did not inform anyone with regard to the happening of the earlier day. He has subsequently deposed in cross examination that he did not tell anyone

with regard to the occurrence of murder. He has stated that he told the incident of *Marpeet* to Pradhan of Gaon Sabha after 7-8 days and to the police after 10-12 days. He has further deposed that he told the police after 24 to 25 days about the incident of *Marpeet.* He stated before the police about the occurrence of *Marpeet* at Nachani but his statement was not recorded at Nachani. He has further deposed that his statement was recorded by the police after 2-1/2 months of the incident. He has also deposed that patwari recorded his statement after about 1-1/2 months of the incident at Nachani.

24. Further, P.W. 3 Lal Bahadur has deposed that he has no concern with the shop of Manohar Singh but he used to work with Manohar Singh on contract basis and used to stay in his house in the night. He has also stated that house of Manohar Singh is on the upper side of the road and shop is on the lower side of the road. This witness has stated that deceased Harish Chandra used to reside on the ground floor of the shop. This witness has also deposed that in his evidence, when the dead body of Harish Chandra was taken out from the room, he was present at that place but it is strange to note that if this witness had seen the occurrence of *Marpeet* even than he did not disclose this fact to anyone for a long time which creates a doubt about his veracity.

25. The prosecution has produced P.W. 4 Gopal Singh as eyewitness of occurrence. We have already observed above that Gopal Singh is also the witness of the inquest and he has deposed in his statement that he saw accused/appellants hanging the deceased with the rope but at the time of inquest he neither informed the brother

of the deceased Hari Shankar nor the police personnel nor any of the authorities present over there. This witness again is a chance witness. He is the resident of another village and he has stated that he had gone to the house of the deceased Harish Chandra in order to stay over there. His house is situated at a distance of 2 kms. from the house of the deceased Harish Chandra. This witness has also stated that on 31.12.1981 at about 9:00 a.m. in the morning, there was some quarrel between Harish Chandra deceased and the accused/appellant Satish Chandra. He has stated that Satish Chandra committed *Marpeet* with deceased Harish Chandra in the morning of 31.12.1981 and he intervened in this *Marpeet.* He has also stated that patwari Satish Chandra extended threat to deceased Harish Chandra as he will be murdered. This witness has stated that he informed about the occurrence to the villagers as well as brothers of the deceased. He has stated that he knows all the family member of the deceased Harish Chandra. He has also stated that he did not inform about actual occurrence to Dr. Manohar Singh as he was quite scared of. He has further deposed that he did not inform about actual occurrence to any of the villagers in village Nolara. He has stated that he had to save his life hence he did not inform the actual occurrence to anyone.

26. It is further pertinent to mention here that P.W. 4 Gopal Singh has stated that he was going to inform the brother of the deceased but on the way Hari Shankar brother of deceased met and he informed him about the actual occurrence at about 11:00 a.m. on the next day.

27. The statement of this witness does not appear to be trustworthy as he has stated that he informed Hari Shankar at about 11:00 a.m. on the next day with regard to actual occurrence but neither Hari Shankar nor this witness raised any objection at the time of the inquest of deceased. This witness in his cross examination has stated that he informed only one brother of the deceased and further he informed about actual occurrence to all the brother of the deceased on 05.01.1982. This witness has further deposed that his father owed some land from the Horticulture deptt and for realization of that loan, patwari Satish Chandra came to him and realized that loan from him. There is a possibility that this may be the reason with this witness to falsely implicate the accused/appellants in the commission of crime otherwise silence of this witness for a long time about disclosure of actual incident to anyone again creates a doubt about his testimony.

28. The deposition of P.W. 4 Gopal Singh again faces a major contradiction as P.W. 1 Hari Shankar who is the brother of the deceased has categorically deposed in his deposition before the Court that we went to the village Nolara on 02.01.1982 after receiving the information and he received the information with regard to death of Harish Chandra for the first time through the slip received by him from patwari Satish Chandra. This witness has in his cross examination subsequently deposed that he knows Gopal Singh but Gopal Singh has not informed him about murder of his brother. P.W. 1 Hari Shankar has stated that Gopal Singh disclosed about this murder to him subsequently as well as Lal Bahadur P.W. 3 also disclosed about the murder of Harish Chandra afterward. He has

further stated in his evidence that Gopal Singh informed about murder of Harish Chandra after 1-1/2 months of the death of Harish Chandra. He also deposed that Lal Bahadur also told him about the murder of Harish Chandra after about 1 month of this death. This witness has stated that Gopal Singh told him about the occurrence in his village while Lal Bahadur told him about the occurrence at Nachani. He has also stated that he knew Gopal Singh before the murder of his brother. It is, therefore, quite strange that Gopal Singh who is the witness of the inquest as well as alleged eye witness of the occurrence did not either inform Hari Shankar brother of deceased with regard to actual incidence or to anyone in the village or to any of the authorities for a long time. Therefore, it appears to us that the prosecution in fact did not have any knowledge with regard to he actual assailants but on account of this fact only that the accused Satish Chandra patwari had some quarrel and there was an incident of *Marpeet* with Satish Chandra accused/appellant and deceased Harish Chandra. hence only on this reason the accused/appellants have been falsely implicated in the commission of crime.

29. On the basis of assessment of evidence, we reach to the conclusion that the prosecution has utterly failed in establishing guilt of the accused/appellants beyond reasonable doubt.

30. We are of the view that the convection and sentence thereon passed by the Trial Court against the accused/appellants is liable to set aside.

31. Accordingly the appeal is allowed. The judgment and order dated 13.11.1984 passed by the Court below convicting and sentencing the accused/appellants for life imprisonment u/s 302 read with Section 34 I.P.C. is hereby set aside.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

December 06, 2004
Shiv